Howson v. Similik Inc., 2023 WL 7486607 (Wash. Ct. App., Nov. 13, 2023)(unpublished).

- **Holding**: Due to tribal sovereign immunity, the state court could not hear a personal injuries action against a tribally-owned Washington corporation that owned and operated a golf course located outside reservation boundaries.
- **Summary**: The Swinomish Indian Tribal Community (Tribe) bought an existing Washington corporation, Similk, Inc. (Similk), that owned and operated the Similk Golf Course, outside the current Swinomish Indian Reservation (Reservation) boundary. Howson was injured on the course and sued Similik in state court.

  The court of appeals determined that Similik was an arm of the Tribe and thus within the scope of the Tribe's sovereign immunity. Starting from the premise that a "tribe's sovereign immunity extends to tribal commercial and governmental activities both on and off the tribe's reservation," (quoting *Foxworthy v. Puyallup Tribe of Indians* Ass'n, 141 Wn. App. 221, 226, 169 P.3d 53 (2007), in turn quoting *Kiowa Tribe of Okla. v. Mfg. Techs*., Inc., 523 U.S. 751 (1998)), the court applied the five-factor test established in *White v. Univ.. of Cal*., 765 F.3d 1010, 1025 (9th Cir 2014):

  > (1) the method of creation of the economic entities; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) the tribe's intent with respect to the sharing of its sovereign immunity; and (5) the financial relationship between the tribe and the entities.

  The court concluded the first factor was neutral because Similik was initially created under state law, was a state corporation with the right to sue and be sued, but was now operated solely to benefit the Tribe. The second and third factors weighed in favor of sovereign immunity, Relevant facts included the fact that when Similik was purchased, the Tribe immediately amended Similk's articles of incorporation establishing a new purpose that Similk must operate at all times to benefit and to carry out the purposes of the Tribe. Similik was governed by a Board of Directors appointed by the Swinomish Senate, the Board reported directly to the Senate, and all Board members were elected members of the Senate, Tribal members, or Tribal employees. The course was treated as a department of the Tribe's casino, and was under the Casio's operating budget. Also, the Tribe contributed $250,000 annually to Similik for capital expenses, offered free and reduced golf memberships and green fees to Tribal members and supports golfing programs for Tribal youth, and was used to conduct Tribal business and build relations with local elected and business leaders.

  The fourth factor weighed against finding Similk an arm of the Tribe, because Tribe did not change Similk's corporate form and it remained a Washington corporation with the right to sue and be sued.

  The fifth factor weighed in favor of finding Similk an arm of the Tribe, since there was significant cash flow between Similik, the Tribe, and the Tribe's casino.

  While one of the five *White* factors is neutral, and one factor weighed against immunity, the court concluded that three of the *White* supported the conclusion that Similk is an arm of the tribe and thus subject to sovereign immunity.
- **Relevant (2023) Deskbook Section**: 7:20